

BEFORE THE  
DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS  
OF THE STATE OF HAWAII

In the Matter of the Application	)	
of	)	DOCKET NO. 95-09
	)	
TIME WARNER ENTERTAINMENT COMPANY,	)	
L.P.	)	
	)	
For Transfer and Amendment of the	)	
Cable Franchise of Daniels	)	
Communications Partners Limited	)	
Partnership for the Hawaiian	)	
Cablevision Cable System	)	
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DECISION AND ORDER NO.174

**I. Introduction.**

On June 28, 1995, Time Warner Entertainment Company, L.P. ("TWE") filed its Application for Transfer and Amendment of the Cable Franchise of Daniels Communications Partners Limited Partnership for the Hawaiian Cablevision system.

Daniels Communications Partners Limited Partnership ("Daniels") dba Hawaiian Cablevision Company provides cable communications service to West Maui of the island of Maui ("Lahaina System") in Census Tract Areas 314 and 315 which include Lahaina, Kaanapali, Honokawai, Kahana, Napili, Kapalua, Honolua, Honokohau, and Kahakuloa. Daniels' cable communications franchise expires on December 31, 1999.

Pursuant to that certain Asset Purchase Agreement by and between Daniels and TWE through its division Time Warner Cable Ventures, dated as of May 26, 1995, Daniels has agreed to sell all of its interest in the assets of the Hawaiian Cablevision system to TWE for a total purchase price of \$26,000,000.00 in cash subject to certain prorations and adjustments at and after closing.

In its application for transfer and amendment of cable communications franchise TWE sets forth certain representations or commitments.<sup>1</sup> Although all representations made by TWE in connection with its transfer application are considered material by the State, some of the major representations or commitments of TWE are as follows:

1. TWE will support public, educational and government ("PEG") access by (a) contributing an amount equal to three percent (3%) of its annual gross revenues from its Lahaina System for PEG operating funds, (b) contributing capital funds for PEG facilities and equipment, and (c) providing fiber optic interconnections with other cable systems for PEG access purposes at TWE's actual cost of labor and materials, and will maintain and repair such interconnections at no charge or cost to the State;
2. TWE will contribute one percent (1%) of its annual gross revenues from its Lahaina System to the Hawaii Public Broadcasting Authority Revolving Fund;
3. TWE will provide fiber optic interconnections between INET sites designated by the Director within its Lahaina System's service areas at TWE's actual cost of labor and materials, and to maintain and repair such interconnections at no charge or cost to the State;
4. TWE will provide and maintain a direct interconnect with the Hawaii Interactive Television System ("HITS") at no charge or cost to the State; and
5. TWE will upgrade the Lahaina System's cable distribution systems from the current bandwidth of 450 MHz (60 analog channel capacity) to a bandwidth of 750 MHz or an analog channel capacity of 75 analog channels plus digital headroom using fiber to node architecture. The total cost of the planned upgrade is approximately \$4,164,000.00. TWE does not intend to pass through to subscribers the cost of such upgrade via TWE's current cable rates as determined under federal benchmark cable rate regulations. The engineering design and capital requirements for the Lahaina

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<sup>1</sup>The Director notes that this is the second transfer of a cable communications franchise to TWE within the past six months. Pursuant to Decision and Order No. 173 issued on June 30, 1995, the cable communication franchises for the Kailua-Kona and North Kohala districts of the island of Hawaii were transferred to TWE. In connection with that transfer, TWE made similar if not identical representations or commitments to those noted herein.

System upgrade is anticipated to be similar to that being deployed by Oceanic Cablevision on Oahu.

Pursuant to section 440G-7, Hawaii Revised Statutes, a public hearing on the transfer application was held at 6:30 p.m. on August 10, 1995, at the cafeteria of King Kamehameha III School, 611 Front Street, Lahaina, Maui. Notice of the hearing was published in the Maui News on July 19 and 26, 1995.

## **II. THE LAW.**

### **A. Federal law**

The transfer of a cable communications franchise is made under the authority of State law and is consistent with the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992 (the "Cable Act").

Section 624 of the Cable Act allows franchising authorities to impose requirements for cable-related facilities and equipment which include, but are not limited to, channel capacity, system configuration, and institutional and subscriber networks. Section 611 permits franchising authorities to require that channel capacity be designated for public, educational or governmental access use. Section 622 allows the assessment of a franchise fee up to five percent (5%) of annual gross revenues, any portion of which may be used for public, educational and governmental access.

### **B. State law**

The regulatory powers of the Director regarding the transfer of a cable communications franchise are set forth in sections 440G-7, 440G-8, 440G-10.1, and 440G-12, Hawaii Revised Statutes, as amended ("Hawaii Cable Law").

Section 440G-10.1, Hawaii Revised Statutes, requires the Director's prior approval of a transfer of a cable communications franchise. Section 440G-8(b), Hawaii Revised Statutes, establishes the criteria to be considered by the Director prior to issuing a cable communications franchise, and states as follows:

(b) The director, after a public hearing as provided in this chapter, shall issue a cable franchise to the applicant when the director is convinced that it is in the public interest to do so. In determining whether a cable franchise shall be issued, the director shall take into consideration, among other things, the content of the application or proposal, the public need for the proposed service, the ability of the applicant

to offer safe, adequate, and reliable service at a reasonable cost to the subscribers, the suitability of the applicant, the financial responsibility of the applicant, the technical and operational ability of the applicant to perform efficiently the service for which authority is requested, any objections arising from the public hearing, the cable advisory committee established by this chapter, or elsewhere, and any other matters as the director deems appropriate in the circumstances.

**C. The Privilege of a Franchise**

The grant of a cable communications franchise gives the recipient a right to use and occupy public places, highways and easements which are of a limited and scarce nature. Substantial economic benefits may flow to the recipient as a consequence of this privilege.

The privilege of a franchise therefore carries with it associated obligations. The franchisee should recognize that there are certain responsibilities it assumes when issued a franchise. These include operating a system that is both responsive and responsible to the public it serves, providing the widest possible diversity of information sources and services to its subscribers at a reasonable cost, and enhancing communications capabilities for its communities by supporting interconnection of public facilities, public television, and public, educational and governmental access.

**III. STATUTORY CRITERIA.**

**A. Public Need for Proposed Service**

There is a public need for continuing and expanding the existing cable communications service for the Lahaina area. TWE states that it will provide the same cable programming services now offered by Daniels. Daniels currently passes approximately 4,400 homes in the West Maui area and, of these, provides service to approximately 4,200 residential subscribers. In addition, Daniels' average number of bulk (condominium, townhomes, apartments) and commercial subscribers is approximately 12,700. Most of these subscribers would be without cable communication services if Daniels or TWE ceased to provide that service. This indicates a need for continued cable communication services as proposed by TWE.

TWE states that it will aid and encourage the development of desirable local programming, and that it voluntarily commits to financially supporting public, educational and governmental ("PEG") access operations and facilities and equipment, and the Hawaii Public Broadcasting Authority, as well

as continuing to provide interconnections of PEG access facilities and governmental buildings and facilities. TWE also states that approximately 7,000 new residential units in the Lahaina area will be completed within the next five to ten years, and that it will extend its Lahaina System to the new subdivisions and other developments to meet the increasing demands for cable service.

**B. Suitability of the Applicant**

In evaluating the suitability of TWE, the State considered, among other things, TWE's existing Hawaii cable division, Oceanic Cablevision ("Oceanic"). Although the Lahaina System will be owned and financed by TWE, it will operate as a separate operating unit of Oceanic with its own profitability and capital spending measurements and regulatory and service standards. Oceanic will, however, maintain overall management of the Lahaina System. TWE intends to maintain the present staffing of the Lahaina System and service offerings. Therefore, based upon the foregoing, TWE is a suitable applicant.

**C. Operational Ability of the Applicant**

The Applicant is suitable to operate the Lahaina System. The history of TWE's Hawaii cable division, Oceanic Cablevision, demonstrates TWE's ability to operate its cable systems efficiently.

The Director anticipates that the Daniels system will benefit from TWE's economies of scale in equipment and programming purchases, engineering expertise, employee training, human resources, and equity financing.

**D. Technical Ability of the Applicant**

A clear goal of TWE's acquisition of Hawaiian Cablevision is to provide increased channel capacity through expanding the bandwidth of the cable system to 750 MHz (75 analog channels plus digital headroom). Because increasing channel capacity continues to be among the State's goals, it is imperative that TWE have the technological expertise to accomplish the necessary system upgrade.

TWE states that it will upgrade the Lahaina System to a total bandwidth of 750 MHz using fiber technology similar to that currently being deployed on Oahu by Oceanic pursuant to Decision and Order No. 158, dated June 30, 1994. TWE also states that the 750 MHz upgrade will allow the deployment of TWE's Full Service Network ("FSN") architecture for the Lahaina area as services become available and are economically viable. Services envisioned by TWE via the FSN include interactive games, home shopping, video-on-demand, and remote printing.

In addition, TWE indicates that it does not anticipate making any significant personnel changes at the Lahaina System. Existing managerial and technical personnel are competent, well-trained, and capable of meeting the technical requirements of the Lahaina System's facilities.

Therefore, it appears that TWE has the requisite competence and expertise to execute the technical requirements of the franchise and to incorporate technological developments.

**E. Ability to Provide Service at Reasonable Cost and Financial Capability**

TWE states that it is committed to offering safe, adequate and reliable services at a reasonable cost. The use of "fiber to node" architecture for its Lahaina System upgrade should decrease outages, enhance system reliability, and improve picture quality. TWE also states that it is committed to meet or exceed all State and federal customer service standards.

In addition, TWE states that it is financing the purchase of the Daniels' Hawaiian Cablevision system entirely through TWE working capital. The financial plan presented by TWE is based on several assumptions. It assumes an increased base of subscribers, and increased revenues from premium services and ancillary services. TWE's financial plan further appears to reflect adequate cash flow for operations and capital expenditures over a ten-year period.

According to TWE, the proposed 750 MHz system upgrade is anticipated to be financed through a combination of internally generated funds and TWE. Because TWE is a multi-system operator with numerous other cable systems including recent acquisitions such as the former Sun Cablevision and Kamehameha Cablevision systems on the island of Hawaii that will require system upgrades in the near future, the Director is concerned about the availability of sufficient capital and other resources for TWE to complete the Lahaina System upgrade and all other system upgrades within the State when required.

Therefore, in order to provide adequate assurances that the Lahaina System upgrade will be completed at the time required, the Director may require TWE to deposit an amount equal to the total construction cost of the Lahaina System upgrade in a Development Fund, in the event circumstances arise that significantly affect TWE's ability to complete the upgrade. The Development Fund requirement will be extinguished upon the satisfactory completion of the Lahaina System upgrade.

With respect to future cable rates, it is noted that Time Warner Cable and the Federal Communications Commission ("Commission") have recently negotiated a social contract covering a five year period beginning on the date the social

contract is adopted by the Commission. Because the social contract may or may not be adopted by the Commission after the issuance of this Order, and because of concerns regarding certain matters described in the social contract such as preemption of any state or local law, regulation, ordinance or franchise that is inconsistent or conflicts with the social contract, a "lifeline-type" of basic service, and price caps, the Director reserves the right to modify this Order in the event the Commission adopts the social contract.

In addition, Time Warner Inc. has recently agreed to acquire Turner Broadcasting System Inc. via an exchange of stock. Because the impact of the acquisition on TWE's financial capability is uncertain at the present time, the Director reserves the right to request additional information regarding the acquisition, and to modify this Order if necessary.

#### **F. Public Hearing**

Testimony presented in person at the public hearing and in writing expressed support for, among other things, the continuation of public access provided by Akaku: Maui Community Television ("Akaku"), a private non-profit corporation. Testimony also expressed opposition to TWE's proposal to contribute one percent (1%) of its annual gross revenues from the Lahaina System to the Hawaii Public Broadcasting Authority, and indicated the funds should remain on Maui and used for Lahaina public access.

Daniels' current obligation for PEG access contributions is the greater of an amount equal to two percent (2%) of its annual gross revenues or the specified amount set forth in Decision and Order No. 147 (e.g. \$111,000.00 for year ending December 31, 1995).<sup>2</sup> PEG access programming for Maui county is currently overseen by a consortium of entities including Akaku for public access, Maui Community College and Department of Education for educational access, and the County of Maui for government access.

As noted previously, TWE is committed to contributing an amount equal to three percent (3%) of its annual gross

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<sup>2</sup>Pursuant to section 7.2 of Amended Terms and Conditions attached to Decision and Order No. 147, Daniels is required to contribute PEG access fees in an amount up to three percent of its annual gross revenues. However, for the period December 31, 1991 through December 31, 1995, Daniels is required to contribute the greater of the specified amount for each of those years or two percent (2%) of annual gross revenues. The Director may also reconsider the PEG access fees upon the transfer of the cable communications franchise.

revenues from its Lahaina System for PEG access operations. TWE's commitment to support PEG access operations appears to be more than adequate for providing PEG access programming to the Lahaina area at the present time.

Since 1993 the State, through its franchise order, has required Oceanic to contribute one percent (1%) of its annual gross revenues to the Hawaii Public Broadcasting Revolving Fund for use in the repair, maintenance, purchase or other acquisition of facilities and equipment.<sup>3</sup> The State has recently required Jones Spacelink of Hawaii, Inc. and TWE for its West Hawaii System to contribute the same to the Hawaii Public Broadcasting Revolving Fund.

Written testimony submitted by Hawaii Public Broadcasting Authority ("HPBA") indicates that as a result of continuing cutbacks in State general funds, HPBA will not be able to cover operations as well as equipment repair and replacement needs without the cable companies' contributions. As stated by HPBA, "cable franchise fees are critical to our ability to keep our physical and technical plant at standards required by the Federal Communications Commission and Public Broadcasting Service, and to maintain an adequate level of operations to ensure quality programming." The provision of access to the services of the public broadcasting system continues to be an important part of the overall services offered through the cable communications systems. Under the circumstances, TWE's contribution of one percent (1%) of its annual gross revenues from the Lahaina System is in the public interest.

Another concern expressed by an individual at the public hearing was the lack of cable communications service to Olowalu, approximately 6 miles from Lahaina proper. TWE states that there are approximately 15-20 unpassed homes within two areas - Olowalu and Kahakuloa. However, the demand for cable communications service at such areas and the cost for providing such service are presently not known. Accordingly, by December 31, 1996, TWE shall prepare and submit to the Director a study regarding the feasibility of extending cable communications service to Olowalu and Kahakuloa. The study shall, at a minimum, include for each area an assessment of the demand for cable

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<sup>3</sup>Previously the State Legislature required the cable companies to contribute to the Hawaii Public Broadcasting Revolving Fund. Act 87, 1991 Session Laws of Hawaii, provided that cable companies must contribute an amount equal to one-half of one percent of their gross revenues to the Hawaii Public Broadcasting Revolving Fund for use in program production. Act 87 also provided that this requirement shall be automatically repealed on June 30, 1992.

communications service, identify barriers to and the estimated cost of providing such service, and its recommendations.

Two other concerns were expressed at the public hearing regarding the reception quality of the public access channel, channel 50 on the Lahaina System, and subscribers of basic service only who do not own a cable ready television set or VCR that will enable them to receive channels 50, 51 and 52. The Director understands that these concerns have been resolved by Daniels and Akaku.

#### **IV. FRANCHISE AMENDMENTS; OTHER MATTERS.**

**A. Control** The Hawaii Cable Law states that no change of control of a cable system may occur without the prior approval of the Director. The State is concerned that the entity or individual which actually controls the operations of the cable system, regardless of the means by which that person holds that control, is known to the State, meets the threshold requirements for holding a cable communications franchise, and is responsible and accountable to the State. Therefore, any change in control of TWE's ownership of the Lahaina System shall require the prior approval of the Director.

**B. Upgrade** A key consideration in the State's review of cable communications franchises in Hawaii is to assure that they are technically capable of meeting the existing and future needs and desires of the communities they serve. TWE proposes to upgrade the Lahaina System by December 31, 2000 to a maximum bandwidth of 750 MHz which would increase the Lahaina System's channel capacity from 60 to 75 analog channels, plus digital capacity.

It is also noted that in connection with TWE's 750 MHz upgrade proposal for the Lahaina System, TWE will be required to provide capacity and access for cable subscribers to the State's INET, to the extent that two-way broadband video, voice, and data capabilities are available in the future. Although the manner in which subscriber access will be provided is presently uncertain, the State's objective of receiving capacity and access to an advanced telecommunications infrastructure through TWE's upgraded Lahaina System is advanced by allowing subscriber access to the State's INET.

The Director has, in general, accepted TWE's proposal to increase channel capacity of the Lahaina System. In order to make available to the subscribers the advancements in technological developments, the Director believes that a shorter period of time to complete the proposed 750 MHz Upgrade is in the public interest. Accordingly, the Director will require TWE to complete the proposed 750 MHz upgrade by December 31, 1998.

The Director, after completion of the 750 MHz upgrade, may address the need for and may require TWE to complete additional upgrades of its Lahaina System. It is contemplated that any future upgrade that may be required by the Director in excess of 750 MHz will be first discussed and negotiated with TWE. At that time, the Director may also review public, educational, and government access and INET interconnect requirements.

**C. Public, Educational, and Governmental Access** PEG access is an important issue, particularly on the island of Maui where the PEG access programming can help to bridge the island's geographic breadth and cultural diversity. The Director has, through the requirements of this Order, sought to balance the need for access resources expressed by the community and the current economic and financial crises confronting the State and private sectors.

The Director accepts TWE's proposal to contribute an amount equal to 3% of annual gross revenues from the Lahaina System for PEG access operating funds. The Director does not accept at this time TWE's proposed PEG capital contribution of an amount equal to \$3 per equivalent Lahaina basic subscriber. Contributions of capital for PEG facilities and equipment shall remain at the existing levels for the years ending December 31, 1995 through December 31, 1999, subject to review and adjustments prior to December 31, 1999.

The Director intends to establish planning processes on the island of Maui bringing together all cable systems and interested parties to create and implement a coordinated plan for access activities which make the most effective use of available, if not limited, resources. Specific concerns with respect to lack of equipment and facilities, channel time, and other matters will be addressed in the development of such plans. The Director notes that funding for PEG access via cable companies' contributions should not be viewed as permanent. Thus, PEG access entities and organizations are strongly encouraged to develop short and long term alternative funding strategies.

**D. Public Broadcasting** The continued viability of public broadcasting is in the public interest. The Hawaii Public Broadcasting Authority ("HPBA") provides educational, informative, and entertaining programming that is a valuable public resource for the people of the State of Hawaii. The Director accepts TWE's proposal to contribute an amount equal to one percent (1%) of the Lahaina System annual gross revenues to the HPBA Revolving Fund.

**E. Institutional Network** TWE is committed to continue to support the State's INET and provide interconnections at its actual cost to the State. TWE has reaffirmed its commitment to provide, at its actual cost to the State, two-way fiber optic

institutional network interconnections as may be required by the Director. TWE proposes to maintain and repair the fiber optic lines at no charge or cost to the State, and to replace the same at TWE's actual cost of labor and materials.

The Director recognizes that the continuing expansion of the State's INET is a significant component of the State's telecommunications infrastructure. However, continued expansion requires funding for reimbursements to cable operators. Due to budgetary and other restraints, the Department of Commerce and Consumer Affairs, effective as of July 1, 1995, will not be able to provide the reimbursement for the cable operator's actual cost of labor and materials, as it may had done in the past. Accordingly, payment or reimbursement to TWE for its actual cost of labor and materials for INET interconnections or connections approved after July 1, 1995, will be the sole responsibility of the requesting agency, department, or other governmental entity.

**F. Interconnection with Hawaii Interactive Television System (HITS)** TWE states that it will provide and maintain a direct interconnect with the Hawaii Interactive Television System (HITS) at no cost or charge to the State. It is noted that pursuant to Decision and Order No. 147, Daniels provided a single channel interface between HITS and its cable system, which included hardware for microwave interconnection, at no cost or charge to the State.

**G. Extension of Franchise Term** In connection with its transfer application, TWE has requested that the franchise term for the former Daniels cable system be extended for an additional 11 years or to December 31, 2010 in order to recoup its investment. Although TWE has made substantial commitments to the Lahaina service area, the Director believes that a shorter initial extension of the franchise term, together with an additional period contingent upon the satisfactory completion of the 750 MHz Lahaina System upgrade is in the public interest. Accordingly, the franchise term for TWE's Lahaina System will be initially extended for six (6) years to December 31, 2005, and will be further extended to December 31, 2010 upon the satisfactory completion of the 750 MHz upgrade.

## **V. CONCLUSION.**

Based on the information presented in the application, and the evaluation of this information, the Director concludes that it is in the public interest to approve this application for transfer and amendment of the cable communications franchise for the Lahaina service area held by Daniels. TWE appears to possess the requisite capabilities for issuance of the franchise.

VI. ORDER.

NOW, THEREFORE, the application for the transfer of Daniels Communications Partners Limited Partnership cable franchise to Time Warner Entertainment Company, L.P. is hereby APPROVED, subject to the attached terms and conditions which are incorporated by reference herein. All terms and conditions pertaining to the operation of TWE's Lahaina System are contained in this Order.

DATED: Honolulu, Hawaii, October 2, 1995.

  
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KATHRYN S. MATAYOSHI  
Director of Commerce and Consumer  
Affairs

## **TERMS AND CONDITIONS OF ORDER NO. 174**

### **Section One Definitions**

For purposes of these terms and conditions of Order No. 174, the following words, terms, phrases, and their derivations shall have the meaning given herein. Words not defined shall be given their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. "Shall" and "will" are mandatory, not merely directive or permissive. "May" is permissive.

"Access Cablecast Day" means a day or part thereof during which an Access Channel is available for PEG use.

"Access Channel" means any Channel on the System made available for public, educational, or governmental (hereinafter sometimes referred to as "Access" or "PEG") use.

"Access Facilities and Equipment" means (a) channel capacity designated for public, educational, or governmental use; and (b) facilities and equipment for the use of such channel capacity.

"Access Operating Fee" means the yearly fee to be paid by TWE to the Director or his designee for public, educational, or governmental uses pursuant to section 4.2 hereof.

"Activated Channel" means a Channel engineered at the headend of the Cable System for the provision of services to Subscribers of the Cable System, regardless of whether such services actually are provided, including any Channel designated for public, educational, or governmental use.

"Annual Fee" means the Annual Fee required to be paid by TWE pursuant to Hawaii Revised Statutes section 440G-15, as said statute may from time to time be amended.

"Basic Service" means the lowest cost tier of cable service offered by TWE to all of its Lahaina System Subscribers which includes, at a minimum, the delivery of local television broadcast signals, access channels, and local origination programming.

"Cable Act" means the federal Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 (codified at 47 U.S.C. § 521 et seq.)

"Cable Drop" means the cable from the feeder line to the Subscriber's premises.

"Cable Service" shall have the meaning set forth in Hawaii Revised Statutes section 440G-3, as said statute may from time to time be amended.

"Cable system" and "System" shall have the meaning set forth in Hawaii Revised Statutes section 440G-3, as said statute may from time to time be amended.

"Channel" means a minimum of six megahertz (6 MHz) in the electromagnetic spectrum which is capable of carrying any type of transmission which TWE is authorized to provide to Subscribers.

"Daniels" means Daniels Communications Partners Limited Partnership, a Delaware limited Partnership.

"Department" means the Department of Commerce and Consumer Affairs of the State of Hawaii.

"Director" means the Director of Commerce and Consumer Affairs of the State of Hawaii or the director's designee.

"Director of Civil Defense" means the Director of Civil Defense of the State of Hawaii.

"Educational Access Channel" means any channel on the System which is made available by TWE for use by educational authorities such as the University of Hawaii and Department of Education of the State of Hawaii, and accredited educational institutions for noncommercial educational purposes.

"Emergency Authority" means the Director of Civil Defense, County of Maui, Deputy Director of Civil Defense, and any other Person designated by the Director.

"Emergency Override System" means the emergency alert system specified in section 5.2 hereof.

"Franchise Fee" shall have the meaning set forth in section 622(g) of the Cable Act, as said statute may from time to time be amended.

"Government Access Channel" means any Channel on the System made available for use by city, county and state government, or agencies thereof.

"Gross Revenues" means all cash, credits, property of any kind or nature or other consideration derived directly or indirectly by TWE, its affiliates, subsidiaries, parents, and any other person or entity in which TWE has a financial interest or which has a financial interest in TWE arising from or attributable to operation of the Lahaina System, including but not limited to:

- (a) Revenue from all charges for entertainment and non-entertainment services provided to Subscribers;
- (b) Revenue from all charges for the insertion of commercial advertisements upon the Cable System;
- (c) Revenue from all charges for the leased use of studios or Channels;
- (d) Revenue from all charges for the installation, connection and reinstatement of equipment necessary for the utilization of the Cable System and the provision of Subscriber and other service; and
- (e) Revenue from the sale, exchange or use or cablecast of any programming developed for community use or institutional users.

Gross Revenues shall include, valued at contract price levels, the value of any goods, services, or other remuneration in non-monetary form, received by TWE or others described above in consideration of performance by TWE or others described above of any advertising or other service in connection with the Lahaina System.

"Lahaina System" means the cable system on the island of Maui previously owned by Daniels which provides cable communications service to the areas within Census Tracts 314 and 315.

"Law" means any law, including common law, constitution, statute, treaty, regulation, rule, ordinance, order, injunction, writ, decree or award of any court or administrative body.

"Oceanic" means Oceanic Cablevision, a division of Time Warner Entertainment Company, L.P.

"Order" or "Order No. 174" means Decision and Order No. 174 issued by the Director of Commerce and Consumer Affairs in Docket No. 95-09 and dated October 2, 1995, including all terms and conditions and exhibits.

"Person" means any individual, or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not for-profit, but shall not mean the Director or the Department.

"Public Access Channel" means any Channel on the Cable System made available for use by individuals and organizations for noncommercial purposes.

"Public Highways" shall have the meaning set forth in Hawaii Revised Statutes section 264-1, as said statute may from time to time be amended.

"Public Place" includes any property, building, structure, or water to which the public has a right of access and use.

"Service Area" means those areas of the island of Maui, State of Hawaii for which Daniels or its predecessors in interest were issued cable franchises, and specifically Census Tract Nos. 314 and 315.

"State" means the State of Hawaii including its political subdivisions.

"Subscriber" means any Person lawfully receiving any Cable Service.

"TWE" means Time Warner Entertainment Company, L.P., a Delaware limited partnership.

## **Section Two Grant of Franchise**

### **2.1      Franchise Term**

(a) The term of the franchise for the Lahaina System shall be the balance of the additional four-years granted to Daniels under Decision and Order No. 147, plus six (6) years. The term of the franchise shall expire on December 31, 2005 unless extended as provided in paragraph (b) below, or unless terminated as provided in section 11 hereof or by applicable law.

(b) The term of the franchise shall automatically be extended for an additional five (5) years only upon satisfactory completion of the 750 MHz system upgrade described in section 3.1 hereof, in which case the term of the franchise shall expire on December 31, 2010 unless terminated as provided in section 11 hereof or by applicable law.

### **2.2      Service Area**

This franchise shall cover all areas of the island of Maui which Daniels was authorized to serve and does not extend or alter the boundaries of Daniels' Service Areas and includes the former Hawaiian Cablevision (Census Tracts 314 and 315) franchise areas.

### **2.3      Consideration**

(a) In consideration of the award of the franchise granted herein which permits TWE to use and occupy Public Places and Public Highways to operate a Cable System, TWE shall pay all fees required by Chapter 440G, Hawaii Revised Statutes, as the same may be amended from time to time, pay all monies specified herein, and provide all Channels, facilities, equipment, technical assistance, and services specified herein.

(b) Notwithstanding any other provision to the contrary, the total amount of the Franchise Fees paid in a calendar year, including the Annual Fee for any calendar year, the annual Access Operating Fee, and the HPBA Fee set forth in section 2.6 hereof, shall not exceed five percent (5%) of the Lahaina System annual Gross Revenues or the maximum amount permitted by applicable provisions of federal or State law, as said law or laws may be amended throughout the term of the franchise.

### **2.4      Ownership of Facilities and Plant**

(a) TWE shall maintain legal and equitable title to all of its present and future Lahaina System; provided, however, that TWE may lease or permit the use of all or a portion of the

Lahaina System to a third party or lease a portion of the same from a third party, upon the prior written approval of the Director. Such approval shall not be required with respect to any Channels required to be leased pursuant to the Cable Act.

(b) The Director shall grant such approval if (1) the proposed lease or permitted use will result in savings to Subscribers; (2) the arrangement does not result in a loss of TWE's control of its distribution facilities; and (3) the Director is convinced that it is in the public interest to approve the proposed lease or permitted use. The Director shall make such determination in the Director's sole discretion.

## **2.5        Antitrust**

(a) Order No. 174 shall not be construed as exempting TWE and any affiliated or controlling entities from any antitrust law.

(b) Order No. 174 does not constitute an adjudication upon any antitrust issues which may be involved in this proceeding.

## **2.6        HPBA Fee**

(a) Commencing October 1, 1995, but effective as of January 1, 1996 and during each and every year of the franchise, TWE shall pay to the Hawaii Public Broadcasting Authority Revolving Fund an amount equal to one percent (1%) of the Lahaina System annual Gross Revenues.

(b) Except for the payment required to be made under paragraph (c) below, the one percent (1%) fee shall be paid annually on January 31 and shall be based on TWE's Lahaina System Gross Revenues for the preceding calendar year.

(c) The January 31, 1996 payment shall be based on TWE's Lahaina System Gross Revenues for the period October 1, 1995 through December 31, 1995.

(d) In connection with the payments required under this section 2.6, TWE shall submit to the Director verified copies of all payments made to the Hawaii Public Broadcasting Authority Revolving Fund.

# **Section Three System Upgrades**

## **3.1        750 MHz System Upgrade**

(a) By December 31, 1998, TWE shall construct, reconstruct, rebuild, reconfigure, and/or upgrade the Lahaina System to a bandwidth of 750 MHz and provide a minimum of 75 activated

Channels. For purposes of this Order, this upgrade shall be referred to as the "750 MHz Upgrade."

(b) TWE shall provide capacity for and access through its Cable System for Subscribers to the State's institutional network described in section 5 hereof, to the extent that two-way broadband video, voice, and data capabilities are available pursuant to the 750 MHz Upgrade described herein.

(c) No later than October 1, 1996, TWE shall submit to the Director for approval a financial plan with detailed cost estimates, a detailed engineering plan, a proposed schedule for construction of the 750 MHz Upgrade including the incremental deployment of fiber to node architecture and activation of the completed portions of the upgraded system to specific communities or areas, the interconnection of cable systems on island of Maui, and such other information as the Director deems necessary. If, after one year after receipt of the upgrade plan, the Director does not approve the upgrade plan or require any supplemental information or changes thereto, the upgrade plan as submitted shall be deemed approved.

### **3.2 Further System Upgrades**

After completion of the 750 MHz upgrade as described in section 3.1 hereof, to the extent commercially and technologically reasonable, the Director may address the need for additional upgrades and may require TWE to complete additional system upgrades at such times as determined by the Director. In connection therewith, the Director may review other matters relating to the Lahaina System including, but not limited to, public, educational, and governmental access requirements under section 4 hereof, and institutional network and interconnect requirements under section 5 hereof.

### **3.3 Development Fund**

In the event circumstances arise that significantly affect TWE's ability to complete the 750 MHz Upgrade as described in section 3.1 hereof, the Director, in the Director's sole discretion, may require TWE to set aside an amount equal to the total cost of construction of the 750 MHz Upgrade. Within 30 days after receipt of written notification by the Director, TWE shall deposit an amount equal to the total cost of construction of the 750 MHz Upgrade in an interest bearing account at any bank or financial institution authorized to do business in the State of Hawaii ("Development Fund").

All amounts in the Development Fund including interest accrued thereon shall not be commingled with other funds of TWE or any related entity. TWE shall have the authority to draw on the Development Fund for purposes of financing and constructing the 750 MHz Upgrade; provided, however, that TWE shall not make

any withdrawals from the Development Fund without the prior written approval of the Director or the Director's designee. The Development Fund shall not be pledged, dedicated, or used as collateral for any purpose other than financing the 750 MHz Upgrade, except upon written application to and prior written approval by the Director. The provisions of this section 3.3 shall automatically terminate upon satisfactory completion of the 750 MHz Upgrade.

#### **Section Four** **Public, Educational and Governmental Access**

##### **4.1      Access Plan and Implementation**

TWE shall work cooperatively with the access entity or entities which shall be designated by the Director for the management, operation and use of public, educational, and governmental access facilities and equipment for the County of Maui. TWE shall also work cooperatively with the designated access entity or entities, the Director's staff, and others designated by the Director to develop a coordinated plan for the use of public, educational, and governmental access resources and facilities and equipment for the County of Maui ("Access Plan"). The Access Plan shall at a minimum address the following:

- (a) Resources available in the County of Maui for access use;
- (b) User needs and interest;
- (c) Models for providing public, educational and governmental access;
- (d) Management of access facilities and equipment, including the interconnection of the cable systems within the County of Maui, the need for additional access channels, and the provision of facilities and equipment for the production of programming, including local origination programming;
- (d) Coordination of access with HITS (Hawaii Interactive Television System), HAWAIIAN (Hawaii Wide Area Integrated Information Access Network) and any other interconnects;
- (e) Coordination of access with the Institutional Network as described in section 5 hereof; and
- (f) Funding requirements for public, educational and government access including long and short term alternative financial strategies.

The designated access entity or organization in coordination with TWE and other cable systems on the island of Maui, shall prepare and submit the Access Plan to the Director for review and approval by October 1, 1996 or at such other date as the Director may designate. Any and all costs associated with the preparation of the Access Plan including the cost of consultant services shall be the sole responsibility of the designated access entity or organization. Implementation of the Access Plan shall be at the direction of the Director or Director's designee.

#### **4.2 Access Operating Fee**

(a) TWE shall pay on December 31, 1995 to an account designated by the Director or the Director's designee, the greater of \$111,000.00 or an amount equal to two percent (2%) of the Lahaina System annual Gross Revenues for 1995. This payment shall be used for public, educational and governmental access uses for the year ending December 31, 1995. In the event TWE pays an amount equal to two percent (2%) of the Lahaina System Gross Revenues for 1995, reconciliation of the amount paid with the actual amount of TWE's Lahaina System Gross Revenues for that period shall be in accordance with paragraph (e) below.

(b) For the year ending December 31, 1996 and continuing for each year of the remaining term of the franchise, TWE shall pay to an account designated by the Director or the Director's designee an amount equal to three percent (3%) of TWE's annual Gross Revenues from the Lahaina System. These payments shall be used for public, educational and governmental ("PEG" or "Access") purposes and for other public purposes as shall be designated by the Director. Such payments shall be hereinafter referred to as the "Access Operating Fee."

(c) Except for the payment required under paragraph (a) above, the estimated Access Operating Fee shall be payable each year on the first day of the calendar year based on the estimated the Lahaina System Gross Revenues for that year. For example, on January 1, 1996 the entire estimated three percent (3%) Access Operating Fee for 1996 shall be paid based on the estimated Lahaina System Gross Revenues for 1996.

(d) The amount of Access Operating Fees paid during any year shall amount to no less than two and four-tenths percent (2.4%) of TWE's actual Lahaina System Gross Revenues for the applicable one-year period. If TWE fails to pay the minimum estimated Access Operating Fees required by this paragraph (d), TWE shall be deemed in violation of this Order.

(e) All payments of the Access Operating Fee shall be reconciled with the actual amount of TWE's Lahaina System Gross Revenues for the applicable period. Such reconciliation shall take place no later than the end of the third month following the

applicable one-year period. At the time of the reconciliation, TWE shall pay to the Director or the Director's designee any balance owed. If TWE is entitled to a refund, the Director shall grant a credit toward future Access Operating Fees, or grant a refund if the last payment of Access Operating Fees has been made.

(f) In connection with Access Operating Fees required to be paid by TWE under this section 2.6, TWE shall submit to the Director verified copies of all such payments and other supporting documentation as may be requested by the Director.

(g) Notwithstanding any provision to the contrary, the amount of the Access Operating Fee may be reconsidered at any time by the Director.

#### **4.3 Access Channels**

(a) TWE shall designate and make available to the Director or the Director's designee a total of three (3) full-time activated Access Channels for the Lahaina public, educational, and governmental access over the Lahaina System.

(b) At such time as the Director may require after the completion of the 750 Mhz Upgrade, TWE shall designate and make available to the Director or the Director's designee, at least two (2) additional full-time Access Channels for Lahaina public, educational, or governmental access. The Director, at any time, may require TWE and the designated access entity or organization to prepare a plan which shall include an assessment of the need for the additional Access Channels, how such additional Access Channels will be made available, and any other information the Director may require.

(c) All Access Channels shall be made available by TWE at no cost to the State.

(d) All Access Channels, once made available, shall be used for public, educational, and governmental access and shall be transmitted to all Subscribers on TWE's basic service tier or the most widely available service tier.

(e) TWE may use the two (2) additional Access Channels required to be made available under paragraph (b) above until such time as the Director or the Director's designee gives sixty (60) days prior written notice to TWE that an Access Channel or portion thereof shall be made available. TWE's use of any Access Channel after it has received such notice from the Director or the Director's designee shall be subject to the fallow time provisions in section 4.4 hereof.

(f) The Director or the Director's designee shall allocate Access Channels or portions thereof among Public Access Channels, Educational Access Channels and Government Access Channels; provided that allocations made with respect to public access shall comply with applicable law.

#### **4.4 Fallow Time on Access Channels**

(a) TWE shall be permitted to use time on one or more Access Channels whenever there are no Channels otherwise available on its system whether or not activated and whenever such Access Channel(s) is not scheduled for use at least 72 hours in advance of such time or times desired by TWE; provided that any use of such Access Channel(s) by TWE shall at all times be subordinate to designated access use and shall terminate or be preempted by access programming scheduled at least 72 hours in advance.

(b) All non-access programming on Access Channels shall be identified as such by an appropriate announcement made prior to and following each non-access use.

(c) Notwithstanding paragraphs (a) and (b) above, at such time as any Access Channel has been programmed for a daily average of eight (8) hours or fifty percent (50%) of the hours of Access Cablecast Days, whichever is less, during any 90 day period, use of such Channel by TWE shall be suspended for such time as such minimum access use of the Channel is maintained. The provision of this paragraph (c) may be waived by the Director for good cause.

#### **4.5 Facilities and Equipment**

(a) For the years ending December 31, 1995 through December 31, 1999, TWE shall pay to an account designated by the Director or the Director's designee capital for public, educational, and governmental access facilities and equipment in accordance with the following schedule:

<u>Due Date</u>	<u>Amount</u>
December 31, 1995	\$10,000.00
December 31, 1996	\$40,000.00
December 31, 1997	\$24,000.00
December 31, 1998	\$40,000.00
December 31, 1999	\$35,665.00

(b) By April 30, 1998, TWE in consultation with the designated access entity or organization shall submit to the Director a schedule for the payment of capital for public, educational, and governmental access facilities and equipment for the year ending December 31, 2000 and for each year of the remaining franchise term. The Director may, in the

Director's sole discretion, approve, deny, or modify the payment schedule.

(c) Any PEG capital provided pursuant to this section 4.5 shall not be credited to the Access Operating Fee.

(d) Any transfer of the Lahaina System shall require the payment to the Director or the Director's designee of the outstanding PEG capital funds for public, educational, and governmental access required to be provided in this section 4 before the effective date of the transfer.

(e) The capital funds for the provision of facilities and equipment required to be provided by TWE under this section 4.5 shall be deemed to be capital contributions to the extent permitted under section 622(g)(2)(C) of the Cable Act.

#### **4.6 Access Organization**

The Director or the Director's designee may designate one or more entities to fund, control, manage or operate Access Facilities and Equipment.

#### **4.7 Termination of Access Payments**

(a) TWE may suspend making payments under sections 4.2 and 4.5 hereof if any of the following events occur:

(1) A minimum of seventy-five percent (75%) of the current number of original hours of access programming is not produced; or

(2) Such payments are used for non-access purposes.

(b) TWE's obligation to make such payments shall be reinstated at such time as the event causing the suspension is cured or rectified.

#### **4.8 Interconnection for Access Purposes**

(a) TWE shall effect interconnections with other cable systems on the island of Maui in accordance with a schedule and in a manner determined by the Director. Within six (6) months after the request of the Director, TWE shall submit to the Director for approval the construction plan and schedule. TWE shall work cooperatively with the Director's staff and others designated by the Director in developing a construction plan and schedule for the required interconnections.

(b) The cost of the interconnections to be constructed shall be allocated among each of the cable franchise areas on the island of Maui. For costs of construction allocated to the areas served by the Lahaina System, TWE shall receive a credit for its actual cost for labor and materials to be applied against its requirement to pay the Access Operating Fee described in section 4.2 hereof or PEG capital funds described in section 4.5 hereof. The taking of any credit by TWE shall require the Director's prior approval. TWE shall provide documentation sufficient to verify the construction cost as requested by the Director.

#### **4.9        Reopening of Access Requirements.**

At any time during the term of the franchise, the Director may commence proceedings for the purpose of addressing future public, educational, and governmental access and other cable-related community needs and interests.

#### **4.10       Reporting Requirements**

To the extent local origination and access programming are provided by TWE, by April 30 of each year TWE shall submit to the Director a report of Lahaina local origination expenses and a report for access programming expenses for the previous calendar year.

### **Section Five Networks**

#### **5.1        Institutional Networks**

(a) Within six (6) months of a request by the Director, TWE shall install fiber optic lines, materials, and electronics for two-way broadband video, voice, and data capabilities, interconnecting network sites between the cable systems, government and public institutions, and public, educational, and governmental access sites within TWE's Service Area as designated by the Director, at TWE's actual cost of labor and materials; provided that the sites at which TWE shall install the fiber optic lines have the necessary infrastructure and rights of way to receive the fibers. These interconnections shall be implemented in accordance with the use of capacity as provided in section 3.1 hereof.

1. When requesting such interconnections, the State will be cognizant of TWE's scheduling, manpower, and resource limitations.

2. Upon written request, the Director may grant an extension for the installation of an interconnection requested under this paragraph (a) for good cause.

3. TWE shall repair and maintain, but not replace, the institutional network's fiber optic lines installed up to the termination points of each network site designated by the Director at no charge or cost to the State. TWE shall replace any such fiber optic lines at TWE's actual cost of labor and materials.

(b) All interconnections shall be via fiber optic lines and capable of carrying circuits for data, voice, video, and analog in both directions.

(c) TWE shall work with the Director's staff, consultants, and others designated by the Director to design the institutional networks and to develop and implement coordinated plans for their use.

(d) With respect to sites designated by the Director and interconnections including any additional interconnection approved by the Director from and after July 1, 1995, the requesting agency, department or other governmental entity shall be solely responsible for reimbursing TWE its actual cost of labor and materials for such interconnections. Upon submission of invoices for the cost of such interconnections, together with such supporting documentation as may be required, and approval by the Director, the requesting agency, department or governmental entity shall promptly reimburse TWE for the costs of such interconnections, which shall include the cost of materials utilized including applicable taxes and shipping charges, cost of labor including social security, unemployment insurance, workers' compensation insurance, and other benefits and taxes; rental value of equipment and machinery; and a diagram showing the fiber optic route and terminating points.

(e) TWE may construct the institutional networks required under this section 5.1 in a manner it deems appropriate, consistent with paragraph (b) above. TWE may utilize contractors to construct or maintain all or any portion of such institutional networks, including without limitation other cable operators.

## **5.2        Emergency Override System**

(a) On or before December 31, 1995, TWE shall configure and maintain the Lahaina System to permit emergency authorities to override, simultaneously by remote control, all audio and video signals on all Channels. Emergency authorities shall include the County of Maui Administrator of Civil Defense. The emergency authorities shall have the sole discretion to determine when to activate the emergency override system.

(b) The Emergency Override System shall provide for activation from emergency operation centers for both voice and video messages.

(c) The video display during emergency voice messages may be State, Civil Defense, or other appropriate official emblems as designated by the emergency authorities.

(d) TWE shall purchase an Emergency Broadcast System receiver of the same type or its equivalent that radio broadcast stations are required by the Federal Communications Commission to purchase.

(e) TWE shall provide a Cable Drop and Basic Service at no cost or charge to the emergency operating center within its franchise area.

(f) TWE shall cooperate fully with the emergency authorities in the planning and implementation of the Emergency Override System.

**5.3            Interconnection with Hawaii Interactive Television System (HITS)**

TWE shall continue to support and provide carriage of the Hawaii Interactive Television System (HITS) programming on its Lahaina System at no cost or charge to the State. TWE shall provide and maintain a direct interconnect with the Hawaii Interactive Television System (HITS) at points to be designated by the Director at no charge or cost to the State.

**5.4            Non-Franchise Fee/Capital Contribution**

The items and services required to be provided under section 5 hereof at no charge or cost to the State shall not be deemed to be franchise fees under section 622(g) or capital contributions under section 622(g)(2)(C) of the Cable Act.

**Section Six  
Programming Services**

**6.1    Mix, Quality, and Level of Service**

TWE shall not alter its current mix, quality, and level of programming services for its Lahaina System basic service tier or most widely available service tier without first obtaining the prior approval of the Director, which approval shall not be unreasonably withheld.

## **6.2 Broad Categories of Programming**

(a) Subject to availability, TWE shall carry programming in each of the following broad categories on its basic service or most widely available service tier:

- (1) Public access programming;
- (2) Educational access programming;
- (3) Governmental access programming;
- (4) Local origination programming;
- (5) Public nonprofit stations with national programming; and
- (6) Broadcast television stations as required by the Federal Communications Commission or applicable law.

(b) No changes may be made by TWE in broad categories of video programming without the prior approval of the Director.

(c) TWE shall provide notice to the Director at least thirty (30) days in advance of any changes in its channel lineup.

## **Section Seven Management**

### **7.1 Books and Records**

TWE shall maintain at its local office(s) a complete set of books and records including, but not limited to, subscriber records, monthly profit-and-loss statements, and other documentation relating to the transaction of its business in the State. All books and records not maintained and available for review at the local office(s) shall, upon request, be made available locally within five (5) working days.

### **7.2 Tariff**

TWE will amend its schedule of service rates and other information as required by the rules promulgated pursuant to Chapter 440G, Hawaii Revised Statutes, as amended, at least 30 days in advance of any changes. The terms and conditions of service shall be subject to approval by the Director to the extent permitted by law.

### **7.3        Reporting of Violations**

(a) Upon acquiring knowledge of any event which is reasonably likely to lead to a violation of any condition of this Order, TWE shall immediately notify the Director in writing specifying: (1) the nature of such violation, (2) an opinion as to when the violation is likely to occur, and (3) the action that TWE proposes to take regarding the probable violation.

(b) Upon acquiring knowledge of the existence of a violation of any condition of this Order, TWE shall promptly inform the Director in writing of (1) the nature of the violation, (2) the period in which the violation has been in existence, and (3) the actions that TWE proposes to take with respect to the violation.

(c) By April 30 of each year, TWE shall submit to the Director a statement to the effect that no violation of this Order has occurred and that TWE has observed or performed every condition contained in this Order. In the event a violation has occurred and is continuing or if TWE has not observed or performed all of the conditions contained in this Order, it shall specify the nature and period of the violation and what action TWE has taken or proposes to take with respect to the violation.

### **7.4        Annual Financial Statements**

(a) By April 30 of each year, TWE shall submit to the Director its annual financial statements for the preceding calendar year. The financial statements shall include a balance sheet, an income statement, and a statement of cash flows. Each financial statement shall be prepared in accordance with generally accepted accounting principles consistently applied. The financial statements shall be represented in sufficient detail to allow the analysis of its Lahaina System operation on a stand-alone basis.

(b) The financial statements required to be furnished pursuant to paragraph (a) above shall be accompanied by a statement showing the basis for computing and the amounts paid by TWE or any subsidiary to its parents, affiliates, subsidiaries, general partners or any person for management fees and fees in the nature of general and administrative allocations.

### **7.5        Other Reports**

In addition to the reports required to be submitted under this Order, TWE shall submit to the Director all other reports at the time required by applicable State and federal law, rules and regulations.

## **7.6        Change in Ownership**

Any change in the general ownership of five percent (5%) or more of TWE shall require the prior approval of the Director.

## **Section Eight Collateralization of System Assets**

### **8.1        Collateralization of System Assets**

(a) In the event the assets of the Lahaina System will be or has been pledged by TWE as collateral for additional borrowing or other purposes, TWE shall notify the Director in writing no later than 15 days after the closing of the loan or credit facility. TWE shall inform the Director of the parties to the loan agreement or credit facility, the total amount borrowed, the term of loan, any restrictions or limitations on the borrowed amount, and any other information the Director may require.

(b) During the term of the franchise, TWE is not required to seek pre-approval of any change in an existing loan agreement or credit facility which encumbers or pledges the assets of the Lahaina System; provided, however, that the Director has the right to pre-approve any financing plan during a franchise renewal or transfer proceeding. Within 30 days after closing, TWE shall notify the Director in writing of changes to any existing loan agreement or credit facility or any new loan agreement or credit facility. The Director shall have the right to request further information or to determine that the change(s) to the loan agreement or credit facility is not in the interest of the continued financial viability of the system and to require corrective measures if necessary.

## **Section Nine Subscriber Service**

### **9.1        Customer Service Office**

(a) TWE shall maintain and operate within its Service Area at least one customer service office to accept payments from Subscribers, returns of equipment, and to receive and resolve all complaints including without limitation, those regarding service, equipment malfunctions, or billing and collection disputes. TWE shall maintain a staff adequate to provide such services in a timely and efficient manner.

(b) For each customer service office, TWE shall implement an operating policy for the optimum number of days per week and hours per day of operation (excluding legal holidays) that will be most convenient for its Subscribers.

## **9.2        Telephone Service**

(a) TWE shall have a publicly listed local customer service telephone number which shall be open for telephone business for at least ten (10) hours each weekday and for at least six (6) hours on Saturdays as determined by TWE to be most convenient for its Subscribers. The customer service telephone number shall also be used for Subscribers' repair service matters. At all other times, TWE shall have at a minimum an answering service to take calls.

(b) Within 30 days of a request by the Director, TWE shall submit to the Director all available information with respect to the adequacy of its telephone response capability including the following matters:

- (1) The average length of time which it takes a human operator to answer a Subscriber telephone call during peak times;
- (2) The number of abandoned telephone calls to subscriber service telephone numbers during peak times;
- (3) The number of busy signals received by callers during peak times; and
- (4) The effectiveness of any new computer equipment in decreasing response time.

(c) The Director may require TWE to perform further analyses of its telephone service and to make such information available to the Director. Based upon such review, the Director may require TWE to improve its telephone service.

## **9.3        Installation and Repair Service**

(a) TWE shall provide installation service for at least eight hours each weekday and Saturdays, except for legal holidays. The specific hours of service shall be determined by TWE to be most convenient for its Subscribers.

(b) TWE shall provide repair service for at least eight (8) hours each week day and Saturdays. At all other times, TWE shall have at a minimum an answering service to take calls and a technician on call to respond to after hour emergencies.

## **9.4        Compliance**

Notwithstanding any provision to the contrary, TWE shall comply with all applicable customer service standards prescribed by the State and the Federal Communications Commission.

## **Section 10 Modification**

### **10.1      Petition for Modification**

(a) No provision of Order No. 174 shall preclude TWE from petitioning the Director for a modification of any provision of Order No. 174 for any reason including, but not limited to, the following: (1) the emergence of increased competition to the cable services offered by TWE; or (2) underutilization of access facilities and equipment. The Director may, in the Director's sole discretion, issue an appropriate modification of Order No. 174.

(b) In determining any modification of Order No. 174, the Director shall take into account the geographic, topographic, and economic characteristics of the Lahaina Service Area, the economics of providing cable service to Subscribers and any other matters necessary to ensure that the terms and conditions upon which cable service is provided are fair to the public and TWE.

## **Section Eleven Termination**

### **11.1      Cumulative Termination Rights**

The termination provisions set forth in this section 11 shall be in addition to and not in derogation of any other rights or remedies the Director may have with respect to the subject matter of this Order No. 174.

### **11.2      Six Month Termination**

(a) If any court, agency, commission, legislative body, or other authority of competent jurisdiction: (1) declares any part of section 3 (System Upgrades), section 4 (Public, Educational and Governmental Access), or section 5 (Networks) of these terms and conditions invalid or (2) requires or allows TWE either to perform any act which is inconsistent with any provision of such sections or cease performing any act required by any provision of such sections, then at the option of the Director the term of the franchise shall terminate six months from the date of such event.

(b) Notwithstanding paragraph (a) above, in no event shall the franchise be terminated under said paragraph prior to December 31, 2000.

(c) The termination provisions of paragraph (a) above shall be suspended for such period of time as TWE may elect to voluntarily perform its obligations under such sections; provided

that TWE provides prior written notice to the Director of such voluntary performance.

**11.3        New Franchise Application Not Excluded**

In the event that TWE's franchise is terminated pursuant to section 11.2 hereof, nothing herein shall prevent TWE from applying for a new franchise.

**Section Twelve  
Miscellaneous Provisions**

**12.1        Headings**

The headings or titles of paragraphs and sections contained in these terms and conditions are to facilitate reference only and shall not in any way affect the construction or interpretation hereof.

**12.2        Successors**

All of the provisions of Order No. 174 and these terms and conditions shall apply to TWE and its permitted successors and assigns.

**12.3        Notices**

All required notices to the Director under Order No. 174 shall be made in writing and shall be submitted to the Cable Television Administrator, 1010 Richards Street, Honolulu, Hawaii 96813 or at such location as may otherwise be specified by the Director.

**12.4        Leased Commercial Access**

Consistent with the Cable Act, on or before November 30, 1995, TWE shall file with the Director and implement a published schedule of terms, conditions, and charges for the leasing of the Lahaina System Channels for commercial use.

**12.5        Laws**

TWE, its employees, and agents, shall be familiar with all federal, State, and local laws, ordinances, rules and regulations that in any manner affect the Lahaina System. If TWE discovers any provision in the plans, specifications, orders or documents which is contrary to or inconsistent with any such law, ordinance, rule or regulation, TWE shall promptly report it to the Director in writing. TWE, its employees, and agents, shall comply with all applicable federal, State, and local laws, rules and regulations issued pursuant thereto, and shall indemnify the

State against any loss, liability or damage occasioned by reason of a violation of this section by TWE and its officers, employees and agents.

**12.6            Performance**

The failure of the Director or the State at any time to require performance by TWE of any obligation or condition of this Order shall in no way affect the right of the Director or the State to enforce the same. The waiver by the Director or the State of any breach of any term or condition of this Order shall not be taken or held to be a waiver of any succeeding breach of such term or condition or as a waiver of the term or condition itself.

**12.7            Hold Harmless**

TWE shall save and hold the State and its officials, agents, and employees free and harmless from any loss, expense or damage to person or property arising out of or resulting from any provision or requirement of the franchise or exercising its rights or performing its duties under this franchise.

**12.8            Waiver**

The Director reserves the right to waive any condition of this Order for good cause.

**12.9            Authority**

The State, from time to time, may adopt or issue such rules, orders or other directives governing TWE as it shall find necessary or appropriate in the exercise of its police power. The Director, from time to time, may issue such orders governing TWE as the Director shall find reasonably necessary or appropriate pursuant to and in furtherance of the purposes of this Order. The Director's authority shall not be used in a manner inconsistent with the provisions of this Order. Further, any action to be taken by the Director regarding this Order shall be taken in accordance with the applicable provisions of federal or State law, as said law may be amended throughout the term of this Order. TWE shall comply with all rules, regulations or orders lawfully binding upon it or other directives issued pursuant to this Order.

**12.10           Test Results**

As soon as available, but in no event more than 30 days after the date of the test, TWE shall submit to the Director the annual test results from the Federal Communications Commission Cumulative Leak Index signal leakage and aeronautical offset requirements test.

**12.11        Audit**

The Director may, in the Director's sole discretion, require that TWE submit to an audit by the Director's accountants. If an audit of TWE results in disclosure of cross-subsidization between cable and noncable services, or unpaid fees or payments required by this Order, statute or rules, the Director may require TWE to pay the full cost of the audit.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing  
DECISION AND ORDER NO. 174 in Docket No. 95-09 was served upon  
the following parties at the address shown below by mailing the  
same, postage prepaid, on this 2nd day of October, 1995.

JOHN T. KOMEIJI, ESQ.  
BETH K. FUJIMOTO, ESQ.  
Watanabe, Ing & Kawashima  
745 Fort Street  
5th & 6th Floors  
Honolulu, Hawaii 96813

*Patti K. Kodama*

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Patti K. Kodama  
Secretary